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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

HENRY EARL DUNCAN,

Defendant and Appellant.

B230459

(Los Angeles County  
Super. Ct. No. A910836)

ORDER MODIFYING OPINION AND  
DENYING PETITION FOR REHEARING  
[No Change in Judgment]

GOOD CAUSE appearing, the opinion filed August 1, 2012, in the above entitled matter is hereby modified as follows:

1. On page 2, second paragraph, last sentence which reads “Appellant was at the restaurant at 11:00 p.m. that night when it closed, and after closing time was seen sitting alone on a bench near the restaurant.”

Should be deleted and replaced with, “Appellant was at the restaurant at 11:00 p.m. that night when it closed, and after closing time was seen sitting alone on a bench in the terminal’s mezzanine level.”

2. On page 5, second paragraph, last sentence which reads “But to forestall a claim of ineffective assistance of counsel for not objecting, we reach the merits of appellant’s contention.”

Should be deleted and replaced with, “But despite appellant’s failure to object below, and in order to forestall a claim of ineffective assistance of counsel, we exercise our authority under Penal Code section 1259 to reach the merits of appellant’s contention of instructional error.”

[end of modifications]

No change in judgment.

Appellant’s petition for rehearing is denied.

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BIGELOW, P. J.

RUBIN, J.

GRIMES, J.